IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1209 OF 2006

1. Sayed Aslam Sayed Jafar,
2. Sayed Akhtar Sayed Jafar. ...Applicants

V/s.

The State of Maharashtra. ...Respondent

Shri Khan Abdul Wahab for Applicants.
Ms.M.H.Mahatre, APP for State.

CORAM : V.M. KANADE, J.

DATED : APRIL 10, 2006

P.C. :-

. This is an application for bail filed by the applicants who are arrested in connection with an offence punishable under Sections 363, 364A, 384, 302, 342, 201 and 120B of the IPC.

2. It is alleged by the prosecution that the applicants and other accused kidnapped 14 year old boy and demanded ransom from his parents and though the said amount was paid, they killed the boy and disposed of his body.

3. In the meantime, the father of the deceased filed a writ petition in this Court, before the apprehension of the present applicants and other

accused, and alleged that the body which was found in a well was not that of his son and therefore, sought the direction that the investigation should be transferred to an independent agency. This Court granted stay to the further proceedings in the trial Court.

4. The applicants, thereafter, filed an application for bail in the Sessions Court. The Sessions Court refused to entertain the application on the ground that since the trial was stayed by the order passed by this Court, it could not hear the bail application. Thereafter, the present application was filed. In the meantime, one of the co-accused filed an application being Criminal Bail Application No.7824/2005 arising out of the same C.R. This Court directed the office to place the said Criminal Application before the Division Bench which had stayed the trial in the Sessions court. The Division Bench, however, directed that the application should be placed before this Court for further orders.

5. The grievance of the applicants is that since

the trial is stayed by this Court, the applicants would be detained in jail indefinitely. He submitted that since the dead body has not been identified by the complainant and there is dispute on that count, the applicants are entitled to be released on bail.

6. In my view, the Sessions Court ought to have decided the applications for bail on merits since no direction has been given by the Division Bench in respect of the bail applications which are filed by the accused in this case. Criminal Application, therefore, is disposed of and the Sessions Court is directed to decide the bail application No.16/2006 which is pending, as expeditiously as possible, and in any case within a period of two months.

7. The application is disposed of in the above terms.

8. The trial Court shall not be influenced by any observations made by this Court while deciding this application and they shall not be construed as an

expression of opinion on merits of the case.

(V.M. Kanade, J.)